

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

ADIDAS AMERICA, INC. and ADIDAS-
SOLOMON AG,

CV 01-1655-KI

OPINION AND ORDER

Plaintiffs,

v.

PAYLESS SHOESOURCE, INC.,

Defendant.

KING, Judge:

On February 4, 2008, Payless Shoesource, Inc. ("Payless") filed a Motion (doc. 673) to Seal Portions of the December 21, 2007 Opinion and Order. In its February 15, 2008 Reply Memorandum, Payless narrowed the Motion to Seal "to only the advice of counsel information identified on pages 3 and 4 of Exhibit A to its Motion" (*i.e.*, the advice of counsel quotations from the Declaration of Stephen Horace, which appear on pages 20 and 21 of the Opinion and

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Order). See Reply Mem., at 1. For the reasons set forth below, the Motion to Seal is GRANTED as to the advice of counsel quotations on pages 20 and 21 of the Opinion and Order.

Throughout the course of this litigation, the parties have sought to protect confidential attorney-client communications and sensitive proprietary business information. The parties agreed to conduct pre-trial proceedings under the shelter of a protective order. See Second Amended Stipulated Protective Order Regarding Confidentiality ("Protective Order") (doc. 431). The parties' recent motions for summary judgment and most of the accompanying documents were filed under seal pursuant to that Protective Order.

On pages 20 and 21 of the December 21, 2007 Opinion and Order, however, the court inadvertently disclosed confidential legal advice given to Payless by outside counsel. Publication of that legal advice was not the result of Payless' inadvertent or purposeful disclosure, but the result of the court's Opinion and Order. The quoted material came from documents that Payless filed under seal and marked as "attorney-client communication-privileged and confidential," pursuant to the Protective Order. adidas does not seriously dispute that designation.

Payless is concerned that the court's disclosure of Payless' confidential legal advice will effect a broader waiver of the attorney-client privilege than Payless intended. Redacting those quotations from the Opinion and Order may help remedy any prejudice to Payless. adidas, on the other hand, is not prejudiced by the sealing of this material.

Accordingly, Payless' Motion (doc. 673) to Seal Portions of the December 21, 2007 Opinion and Order is GRANTED as to the quoted advice of counsel material that appears on

pages 20 and 21 of the Opinion and Order. The court will seal the December 21, 2007 Opinion and Order and file a Redacted Opinion and Order. The court further orders that adidas' Memorandum in Opposition (doc. 674), and the Declaration of R. Charles Henn Jr. (doc. 675) be sealed.

IT IS SO ORDERED.

Dated this 22nd day of February, 2008.

/s/ Garr M. King
Garr M. King
United States District Judge